



SOUTHEASTERN LEGAL FOUNDATION
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November 2, 2017

**VIA ONLINE SUBMISSION &
CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

No. 7016 2710 0000 1861 2985

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460

RE: Freedom of Information Act Request

Dear Sir or Madam:

Southeastern Legal Foundation (SLF) is one of the country's leading non-profit public interest law firms and policy centers. Now in its 41st year, SLF undertakes research on policy issues of interest to the general public. Currently, SLF is engaged in an inquiry into the Environmental Protection Agency's (EPA) including the EPA's decision-making process and handling of Title VI complaints.

Request:

On or around December 20, 2016, the EPA removed from its website a table that listed all Title VI complaints received by the EPA from 1993 to 2014, and also included the Title VI complaints and disposition documents for all Title VI complaints received by the EPA from 2006 to 2014. In response to a prior FOIA request, the EPA provided SLF with a copy of the table. SLF is now requesting all complaints for all Title VI complaints received by the EPA from 2006 to 2014, and any records related to the disposition of those complaints.

Format of Production:

Pursuant to 5 U.S.C. 552(a)(3)(B), SLF requests that the EPA produce any and all responsive records electronically. Please email any and all responsive records to kherrmann@southeasternlegal.org.

SLF is willing to receive responsive records on a rolling basis, if needed, to expedite the EPA's response. If this is not possible, we would appreciate you letting us know at your earliest convenience, with an explanation of the reason for delay.

Request for Fee Waiver

This is a request for records made pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Accordingly, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) we request that the records be furnished without charge, or at reduced charged. While a court is ultimately not required to defer to an agency's interpretation of the FOIA, in anticipation of a request for additional information from the EPA, we have organized our fee waiver justification to coincide with the six factors outlined by the EPA at 40 CFR 2.107(l)(2)(i-iv) and (3)(i)-(ii).

Disclosure is in the public interest.

The first factor is satisfied because the subject of the request concerns identifiable operations or activities of the EPA. "[T]he phrase 'operations and activities' should be broadly construed." 132 Cong. Rec. S16496 (Oct. 15, 1986) (Sen. Leahy). Pursuant to the EPA's regulations, the EPA has the authority to withdraw or threaten to withdraw financial assistance in an attempt to force a recipient of federal funds to come into compliance with the EPA's Title VI nondiscrimination mandates. 40 C.F.R. § 7.130. As such, the procedures and processes relating to Title VI complaints filed with the EPA include many identifiable agency operations and activities. The EPA's regulations set forth a detailed process for how those claiming discrimination by recipients of EPA financial assistance can report said alleged discrimination and how the EPA must respond to such allegations. *See generally* 40 C.F.R. § 7 *et seq.* Those operations and activities include but are not limited to, receiving complaints, processing complaints, conducting investigations, holding hearings, making referrals to other agencies, and terminating federal funding.

The second factor is satisfied because the requested records have significant informative value into the operations and activities of the EPA and are thus, "likely to contribute" in a meaningful way to public understanding of EPA's operations and activities previously identified. For reasons unknown to SLF, the EPA published the requested records until sometime on or around December 20, 2016. The requested information provides insight into the EPA's decision-making process regarding Title VI complaints received by the EPA for the years 2006 to 2014. Given that the EPA no longer makes the requested records available to the public, the records requested are likely to contribute to the public's understanding.

The third factor is satisfied because the requested records will contribute to "public understanding" because SLF will disseminate the requested information to the largest audience possible by disseminating it through the following various mediums: 1) its publicly available website (www.slfliberty.org) and ancillary website (www.epalawsuit.org) which combined receive nearly one million hits per year; 2) its regular mailings (averaging one mailing per week for a total of approximately three million per year) to interested parties providing educational information on the operations and activities of the EPA; 3) its bi-annual or quarterly newsletters to interested parties, totaling approximately ten to twenty thousand per year, also providing educational information on the operations and activities of the EPA; 4) regular spots on a wide-variety of radio programs; 5) spots on television programs; 6) frequent op-eds that run in national newspapers; 7) legislative testimony; 8) participation in legal and policy panels; 9) SLF's blog –

Freedom Speaks! which is prominently displayed on SLF's primary website; 10) SLF's Facebook page; and, 11) SLF events such as Celebrate America®. SLF's eleven methods of dissemination, combined with its 40-year reputation as one of the nation's leading constitutional public interest law firms and policy centers, supports granting SLF's fee waiver request.

The fourth factor is satisfied because the requested records will "significantly" contribute to public understanding of the Title VI complaints received by the EPA from 2006 to 2014, how the EPA handled those complaints and the resolution, if any, of those complaints,. SLF acknowledges that certain aspects of these complaints may be publicly available, but only in the "grossest sense." *See Forest Guardians v. DOI*, 416 F.3d 1173 (10th Cir. 2005) (noting that piecemeal records available through court filings throughout the country, various websites, and a wide-variety of newspapers throughout the country does not make information "publicly available"). The records have the potential to reveal information that is not publicly available in any meaningful way regarding the operations of the EPA and its procedures and processes regarding Title VI complaints – complaints that no doubt have a significant impact on the EPA's decision-making process.

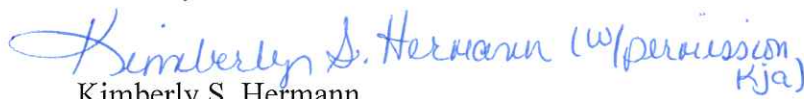
No commercial interest

Disclosure of the requested records is not in the commercial interest of SLF for the following reasons. SLF has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. SLF is a non-profit public interest law firm and policy center specializing in the practice of constitutional law. SLF also undertakes research on policy issues of interest to the public, such as environmental justice, the undertakings of EPA, and the EPA's decision-making process.

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information, including notification of appeal procedures available under the law. If you have any questions about handling this request, you may reach me at the telephone number listed below.

Thank you in advance for your prompt attention to this request.

Sincerely,


Kimberly S. Hermann
General Counsel
Southeastern Legal Foundation
khermann@southeasternlegal.org
(770) 977-2131